

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ALREE B. SWEAT III,

Plaintiff,

v.

No. 15-cv-0226 RB/SMV

**CITY OF LAS CRUCES,
JAIME MONTOYA, MIRANDA BAKER,
PAUL LUJAN, and FNU SANCHEZ,**

Defendants.

ORDER GRANTING LEAVE TO PROCEED IFP ON APPEAL

THIS MATTER is before the Court on Plaintiff's Motion and Affidavit for Leave to Proceed on Appeal Pursuant to 28 U.S.C. § 1915 and Fed. R. App. P. 24 [Doc. 99], filed on October 11, 2016.

Pursuant to Fed. R. App. P. 24(a)(3), a plaintiff who was granted leave to proceed *in forma pauperis* ("IFP") in district court may also proceed IFP on appeal, unless certain exceptions apply. For example, if the appeal is taken in bad faith, leave to proceed IFP on appeal should be denied. Under § 1915 "[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." For purposes of § 1915(a)(3), a good faith appeal is one that presents a reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal. *Carvalho v. Pugh*, 177 F.3d 1177, 1179 (10th Cir. 1999). Similarly, even where a plaintiff proceeded IFP in district court, he should not be permitted to do so on appeal if a statute prohibits it or if he otherwise is not entitled to do so. Fed. R. App. P. 24(a)(3).

In this case, Plaintiff was granted leave to proceed IFP in the district court. [Doc. 16]. None of the exceptions in Fed. R. App. P. 24(a)(3) applies here. The motion should be granted.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Plaintiff's Motion and Affidavit for Leave to Proceed on Appeal Pursuant to 28 U.S.C. § 1915 and Fed. R. App. P. 24 [Doc. 99] is **GRANTED**.

IT IS SO ORDERED.



STEPHAN M. VIDMAR
United States Magistrate Judge